IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C.No.6634-35/2005

Sh. B.B.Chaudhary & Anr. .....Petitioners
! through: Mr. Rajiv Sharma, Advocate

VERSUS

$ Sh. Govinder Arora & Ors. .....Respondents
^ through: Mr. Santosh K.Gupta, Advocate for R-1.
Mr. Atul Kumar Sharma for R-2 and R-3.

% **D**ATE OF DECISION: 22-10-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. First respondent had filed a complaint under Section 138 of N.I.Act impleading M/s Rimple Furnishers & Decorators as accused No.1 and one Ravi Malik and Kamaljit Sisodia as accused No.2 and 3 alleging that they were directors of accused No.1. Petitioners B.B.Choudhary and his wife Neeru Choudhary were not named as accused persons, much less as directors of the company.

2. It was stated in the complaint that Ravi Malik and

Kamaljit Sisodia, directors of accused No.2 had approached and purchased goods from the complainant and had issued certain cheques assuring that the cheques would be encashed on presentation. That the cheques in questioned were returned dishonoured by the banker on whom the cheques were drawn with the remarks "*exceeds arrangement*". That inspite of service of notice under Section 138 of N.I.Act, no payment was made.

3. During pendency of the complaint, an application was filed on 13.8.2003 requesting the learned Trial Judge to even summon the petitioners as accused persons. It was stated in the application that the complainant had learnt that even the petitioners were the directors of the company impleased as accused No.1. The said application was directed to be listed for hearing on 30.9.2003, the date fixed for consideration of the complaint. On 30.9.2005, following order was passed :-

> "Application has been moved on behalf of the complainant disclosing the fresh address of accused No.2 and the other Directors of the company.
>
> It is submitted by the Ld. Counsel for the complainant that a prima facie case is made out against the two Directors viz. Shri B.B.Choudhary and Mrs.Neeru Choudhary. It is further submitted that the names and addresses of the Directors have been disclosed by the

> accused. It is submitted that the Directors are responsible for day to day affairs and the conduct of the business of the company.
>
> In view of the submissions made by the Ld. Counsel for the complainant and the averments made in the application, there is a prima facie case made out against the accused persons.
>
> Let the accused be summoned for 14.11.2003 and accused No.2 be also served on the fresh address mentioned in para VIII of the application."

4. Questioning the order dated 30.9.2003 it is urged by learned counsel for the petitioners that there are no averments in the complaint against the petitioners. In the pre-summoning evidence, not a whisper has been made viz-a-viz the conduct of the petitioners in relation to the affairs of accused No.1 i.e. the company. That on the mere assertion in the application that petitioners were directors of accused No.1, impugned order has been passed.

5. Learned counsel points out that liability of directors of a company is under Section 141 of the N.I.Act and unless specific role is assigned to a person stated to be the director of the company, an order summoning a director would be contrary to law.

6. Learned counsel for respondent No.1 states that it is enough to state that the accused person stated to be the

director was the director of the company and was Incharge of the affairs of the company.

7. It is not in dispute that in the complaint no reference whatsoever has been made to the petitioners. It is also not in dispute that in the pre-summoning evidence which was recorded prior to 13.8.2003 not a whisper has been made regarding the petitioners. In the application in question which has resulted in the petitioners being summoned, it has been stated in para 3 as under:-

> "3. That the applicant/complainant has come to know that there are two more director of the accused company. The said factum was intimated to the applicant/complainant by accused No.3."

8. In para 4 of the application, names and addresses of the petitioners have been mentioned. In para 5 it is stated that petitioners are also responsible for day to day affairs and conduct of the accused company.

9. In the decision reported as AIR 2007 SC 1454, *N.K.Wahi Vs. Shekhar Singh & Ors.*, in para 8, it was observed as under:-

> "8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for

> the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.

10. Keeping in view the law laid down by the Supreme Court, suffice would it be to state that neither in the complaint nor in the pre-summoning evidence nor in the application in question has any assertions been made specifying the part played by the petitioners in the transaction between the accused and the company. In fact, in the complaint there are specific allegations that only accused No.2 and 3 were acting on behalf of the company when the complainant dealt with the company. By the rule of exclusion, the complaint self-negates the role of any other person in the conduct and management of the affairs of the company in question. Thus, I dispose of the petition quashing the order dated 30.9.2003 summoning the petitioners to face trial in the complaint filed by respondent No.1 against M/s Rimple Furnishers & Decorators and its two other directors.

11. I quash the said complaint against the petitioners.

12. No costs.

October 22, 2007 **PRADEEP NANDRAJOG, J.**

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